



188/167
Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:) Group Art Unit: 291
MAG INSTRUMENT, INC.) Examiner: M. Tung
Serial No. 07/411,576)
Filed: September 22, 1989)
For: MINIATURE FLASHLIGHT) Los Angeles, CA 90017

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JAN 07 1992
GROUP 290

DECLARATION OF ANTHONY MAGLICA

December 16, 1991

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

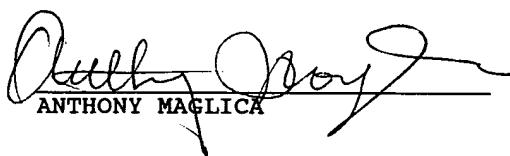
I, ANTHONY MAGLICA, do hereby state as follows:

1. I am the inventor of the invention which is the subject of this pending United States Design Patent Application, Serial No. 410,965, and which relates to the flashlight sold by my company Mag Instrument, Inc. ("Mag") under the name MINI MAGLITE®.

2. Attached hereto is a copy of my declaration dated August 9, 1991 filed in connection with a co-pending U.S. Design Patent Application, Serial No. 410,965. The statements made in this attached declaration are true and correct and are adopted herein. To the extent any exhibits to this attached declaration are missing, it is my understanding that they can be found in the file of U.S. Design Patent Application, Serial No. 410,965.

3. I declare further all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true. I also declare further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001 and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Executed at Ontario, California on the 16th day of
December, 1991.


ANTHONY MAGLICA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:)	Group Art Unit: 291
ANTHONY MAGLICA)	Examiner: M. Tung
Serial No. 410,965)	
Filed: September 22, 1989)	
For: FLASHLIGHT)	Los Angeles, CA 90017

REC.
JAN 0
GROUP

DECLARATION OF ANTHONY MAGLICA

August 9, 1991

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

I, ANTHONY MAGLICA, do hereby state as follows:

1. I am the inventor of the invention which is the subject of this pending United States design patent application, Serial No. 410,965, and which relates to the flashlight sold by my company Mag Instrument, Inc. ("Mag") under the name MINI MAGLITE®.

2. Attached hereto as Exhibit A is a copy of what I understand are the original drawings filed as part of the first United States Patent application directed to the MINI MAGLITE® flashlight. This United States utility patent application was Serial No. 648,032 and was filed on September 6, 1984.

3. The drawings which are Exhibit A include a date of "7-23-84", which I believe is the date the drawings were completed by the patent draftsman.

4. Prior to 7-23-84, I met with my then patent attorney, Paul L. Gardner of Spensley, Horn, Jubas & Lubitz for the purpose of having both a United States utility patent application and a United States design patent application for the MINI MAGLITE® flashlight prepared and filed. To assist Mr. Gardner, I gave to him a MINI MAGLITE® flashlight which was then being manufactured and sold commercially by Mag, components of the flashlight and a Mag drawing of the flashlight.

5. The MINI MAGLITE® flashlight I gave to Mr. Gardner is essentially identical to the MINI MAGLITE® flashlight now being manufactured and sold by Mag. A sample and photograph of the MINI MAGLITE® flashlight are attached hereto as Exhibits B and C, respectively. This MINI MAGLITE® flashlight that I gave to Mr. Gardner had a head with a curved profile. Mag has never manufactured and sold a MINI MAGLITE® flashlight which did not have a head with a curved profile.

6. A copy of the drawings given to Mr. Gardner is attached hereto as Exhibit D. This drawing of the MINI MAGLITE® flashlight also shows a head with a curved profile.

7. In the drawings which are Exhibit A, Figures 2 and 3 show a flashlight head which has a curved profile. However, in Figure 1 there is a mistake. A line which is identified by

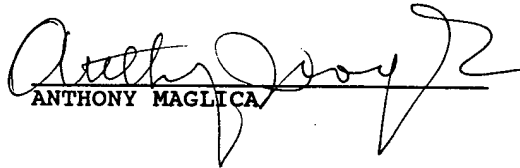
the letter "X" in Exhibit A was incorrectly included. This line "X" gives an angled appearance to the head of the flashlight and is inconsistent with the curved profile of the head shown in Figures 2 and 3 of Exhibit A. This error in Figure 1 of the drawings was not noticed by me until after this patent application issued as United States Patent NO. 4,577,263 on July 2, 1985.

8. Despite my request to Mr. Gardner to also proceed with the preparation and filing of a United States Design Patent application for the MINI MAGLITE® flashlight, Mr. Gardner and his firm, Spensley, Horn, Jubas & Lubitz, negligently failed to prepare and file such an application. That Mr. Gardner and his firm had failed to proceed as I had requested has been confirmed by Mr. Gardner during sworn testimony by him. That testimony by Mr. Gardner is attached hereto as Exhibit E. Because of the failure by Mr. Gardner and his firm to previously file a United States design patent application for the MINI MAGLITE® flashlight, the present United States design patent application for the MINI MAGLITE® flashlight, Serial No. 410,965, was filed.

9. I declare further all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true. I also declare further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001 and that such

willful false statements may jeopardize the validity of the
application or any patent issuing thereon.

Executed at Ontario, California on the 9th day of
August, 1991.

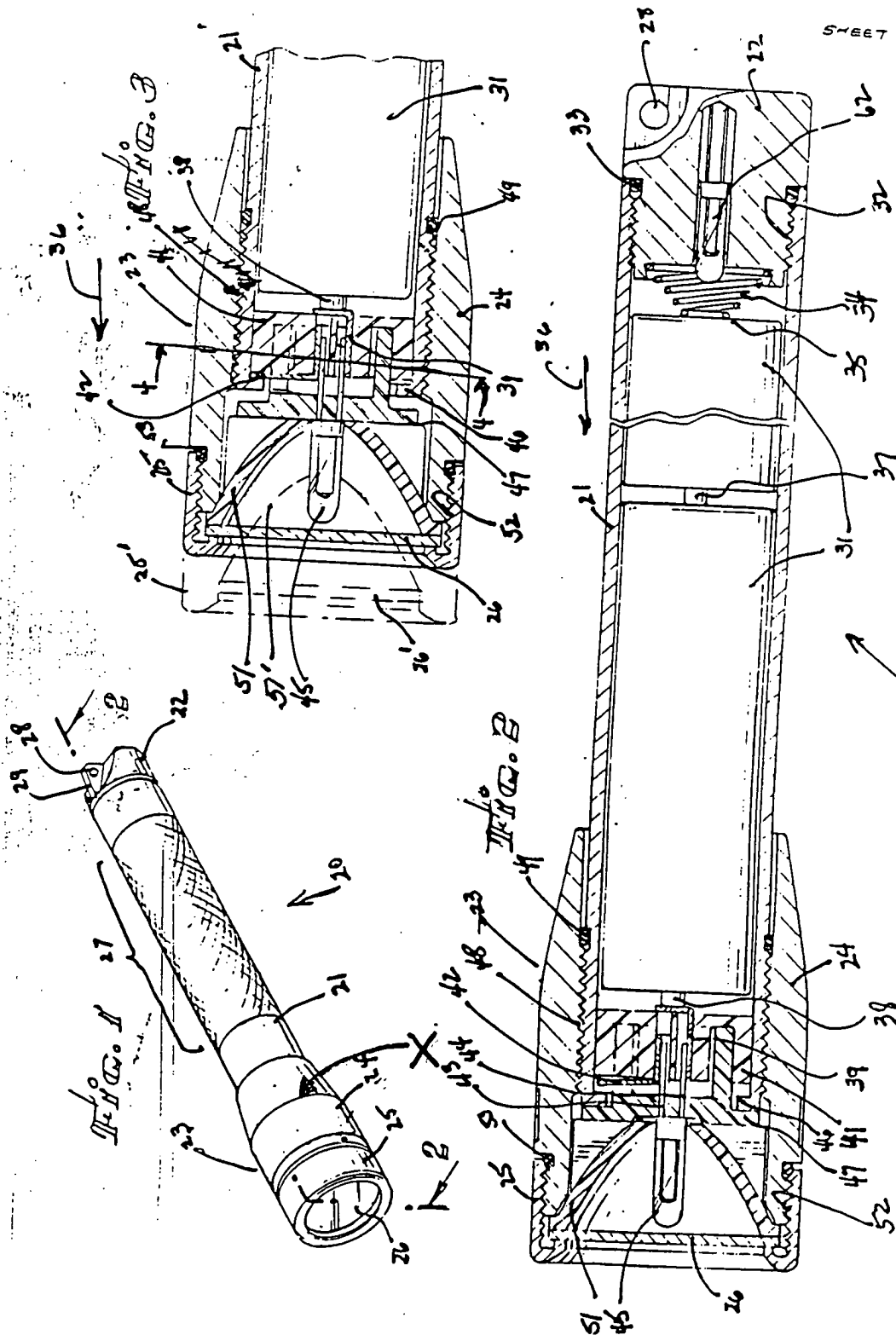

ANTHONY MAGLICA

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SHEET

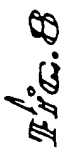


MAG INSTRUMENT

EXHIBIT A

7-23-84

SHEET 2 OF 2

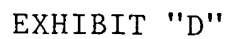


7-89-84

EXHIBIT "A"



EXHIBIT "C"



CONFIDENTIAL
RESTRICTED BY COURT ORDER
MAG V. FRINKMANN

1 A NO.

2 Q DO YOU KNOW WHERE HE WENT WHEN HE LEFT YOUR
3 FIRM?

4 A NO. YOU MEAN KNOW WHERE HE WENT IN TERMS OF
5 WHAT HIS NEXT EMPLOYMENT WAS?

6 Q YES.

7 A NO, I DO NOT.

8 Q DO YOU KNOW WHERE HE WENT GRAPHICALLY?

9 A NO.

10 Q CAN YOU THINK OF ANY WAY IN WHICH WE MIGHT
11 TRACK HIM DOWN?

12 A I CAN THINK OF LEADS.

13 MR. WEISS: THIS WITNESS ISN'T BEING BROUGHT HERE
14 TO BE YOUR INVESTIGATOR.

15 THE WITNESS: I HAVE NO -- I HAVE NO INFORMATION
16 ABOUT WHERE HE IS. TO MY KNOWLEDGE, NOBODY IN THE
17 FIRM KNOWS WHERE HE IS, BUT I HAVEN'T MADE AN INQUIRY.

18 Q BY MR. CLARK: DID YOU EVER DISCUSS WITH
19 MR. MAGLICA THE PREPARATION OF A DESIGN PATENT
20 APPLICATION ON THE MINI-MAGLITE FLASHLIGHT?

21 A YES.

22 Q DID MR. MAGLICA AUTHORIZE YOU TO PREPARE A
23 DESIGN PATENT APPLICATION ON THE MINI-MAGLITE FLASHLIGHT?

24 A I BELIEVE SO. I DON'T KNOW.

25 Q WAS ONE EVER PREPARED?

1 A NO.

2 Q WHY NOT?

3 A I DON'T KNOW.

4 Q DO YOU RECALL EVER INSTRUCTING MR. WALTER
5 TO PREPARE A DESIGN APPLICATION?

6 A VAGUELY.

7 Q DO YOU RECALL EVER DOING A PRIOR ART SEARCH
8 WITH RESPECT TO THE MINI-MAGLITE FLASHLIGHT?

9 A I DON'T RECALL ONE WAY OR THE OTHER.

10 Q DO YOU RECALL EVER DISCUSSING THE SUBJECT
11 OF A PRIOR ART SEARCH OF THE MINI-MAGLITE FLASHLIGHT WITH
12 MR. MAGLICA?

13 A I DON'T RECALL EITHER WAY, NO.

14 Q MR. GARDNER, LET ME HAND YOU A MAG INSTRUMENT
15 BROCHURE WHICH HAS BEEN PREVIOUSLY MARKED FOR IDENTIFICA-
16 TION AS BRINKMANN'S 133 AND ASK YOU IF YOU'VE EVER SEEN
17 A COPY OF THIS BROCHURE BEFORE?

18 A IT'S DIFFICULT WORKING WITH A XEROX. DO YOU
19 HAVE THE ORIGINAL?

20 Q WE'LL TAKE A MOMENT AND OBTAIN THE ORIGINAL.
21 (PAUSE.)

22 A I SAW QUITE A BIT OF -- QUITE A FEW OF HIS
23 BROCHURES OVER THE YEARS, AND IT'S BEEN SOME YEARS SINCE
24 I'VE SEEN IT, SO IT'S DIFFICULT FOR ME TO RECOLLECT.

25 I CERTAINLY FROM THE XEROX COPY -- I CAN'T

1 Q YET, TO THE BEST OF YOUR RECOLLECTION, THIS
2 IS THE ONLY DRAWING THAT MR. MAGLICA GAVE YOU; IS THAT
3 TRUE?

4 A NO, I JUST DON'T RECALL WHAT OTHER ONES HE
5 MIGHT HAVE GIVEN ME. IT COULD HAVE BEEN THE ONLY ONE,
6 BUT HE MIGHT HAVE GIVEN ME OTHERS.

7 Q THIS IS THE ONLY ONE IN THIS FILE THAT HE
8 GAVE YOU?

9 A THIS FILE IS NOT MY FILE. I REMEMBER THIS
10 DRAWING AND MY MEMORY IS REFRESHED BY THE DIMENSIONS I
11 MADE ON IT.

12 Q NOW, WHEN MR. MAGLICA GAVE YOU THIS DRAWING,
13 DID YOU ASK HIM IF THIS PRODUCT WAS ALREADY ON THE
14 MARKET?

15 A I DON'T RECALL.

16 Q DID YOU ASK HIM IF HE'D SOLD ANY?

17 A I DON'T RECALL. IT'S POSSIBLE THAT I DID,
18 BUT I JUST DON'T REMEMBER.

19 Q REFERRING NOW TO THE ISSUE OF FILING FOR A
20 DESIGN PATENT, I BELIEVE UNDER MR. CLARK'S EXAMINATION
21 WHEN YOU WERE ASKED THE QUESTION, DID YOU INSTRUCT
22 MR. WALTER TO PREPARE AN APPLICATION YOU STATED VAGUELY.
23 ALSO, I BELIEVE THAT YOU ANSWERED WAS ONE PREPARED, YOU
24 STATED NO.

25 A THAT'S NOT A CORRECT CHARACTERIZATION, BY

1 THE WAY.

2 I SAID I HAD A VAGUE RECOLLECTION, NOT
3 THAT I VAGUELY ASKED HIM.

4 Q OKAY, THANK YOU FOR THAT CLARIFICATION.

5 NOW, IT'S YOUR TESTIMONY THAT YOU DON'T
6 KNOW OR -- IS IT YOUR TESTIMONY THAT YOU DON'T KNOW OR
7 YOU DON'T REMEMBER WHY NOTHING -- WHY THE APPLICATION
8 WASN'T FILED?

9 A I DON'T KNOW.

10 Q DO YOU KNOW OF ANY FURTHER STEPS THAT WERE
11 TAKEN AFTER THE POSSIBILITY OF YOU HAVING GIVEN MR. WALTER
12 INSTRUCTIONS TO PREPARE AN APPLICATION?

13 A NO, I DON'T.

14 Q WAS IT COMMON THAT INSTRUCTIONS TO PREPARE
15 AN APPLICATION COULD BE GIVEN AND NOTHING FURTHER WOULD
16 HAPPEN?

17 A NO.

18 Q DO YOU NOT KNOW ANY REASON WHY IT SHOULD HAVE
19 OCCURRED IN THIS CASE?

20 A NO.

21 Q DID, TO THE BEST OF YOUR KNOWLEDGE, MR. WALTER
22 OR ANYONE ELSE IN YOUR FIRM LOSE THE FILE CONCERNING THIS?

23 A THAT PRESUMES THERE WAS A FILE. I DON'T
24 KNOW THAT THERE EVER WAS A FILE. WE OPENED A FILE. I
25 CAME TO LEARN THAT WE ALLOTTED A FILE NUMBER TO IT, BUT

1 WHETHER A FILE IS ACTUALLY MADE UP AND IF SO WHAT
2 HAPPENED TO IT, I DON'T KNOW.

3 Q LET ME REPHRASE IT THIS WAY.

4 DO YOU KNOW IF A FILE WAS EVER MADE UP?

5 A NO, I DON'T.

6 Q IF A FILE HAD BEEN MADE UP, DO YOU HAVE ANY
7 KNOWLEDGE OF WHETHER IT WAS SUBSEQUENTLY LOST?

8 A I DO NOT HAVE ANY KNOWLEDGE.

9 Q DO YOU HAVE ANY KNOWLEDGE OF WHETHER ANY
10 OF THE PHYSICAL HARDWARE EITHER PARTS OR FLASHLIGHTS
11 THAT MR. MAGLICA GAVE YOU WERE EVER LOST BY ANYONE IN
12 YOUR FIRM?

13 A NO, I HAVE NO REASON TO THINK THAT.

14 Q DO YOU HAVE ANY KNOWLEDGE WHETHER ANY
15 HARDWARE WAS LOST AT ANY APPLICATION ON THE -- APPLICATION
16 FOR DESIGN PATENT NOT BEING PREPARED?

17 A MAY I HEAR THAT QUESTION AGAIN?

18 Q LET ME REPHRASE IT.

19 DO YOU HAVE ANY RECOLLECTION OF ANY
20 HARDWARE BEING LOST THAT AFFECTED WHETHER A DESIGN
21 APPLICATION WAS PREPARED OR NOT?

22 A NO.

23 Q WHEN DID YOU FIRST REALIZE THAT A DESIGN
24 APPLICATION HAD NOT BEEN PREPARED?

25 A THE TROUBLE I HAVE WITH YOUR QUESTION IS IT

1 SEEMS TO PUT THE CART BEFORE THE HORSE. IT MAY JUST BE
2 ME. I NEVER HAD ANY KNOWLEDGE THAT ONE WAS PREPARED.
3 I WASN'T NECESSARILY OPERATING UNDER THE BELIEF THAT ONE
4 HAD BEEN PREPARED. IT'S JUST THAT I CAME TO LEARN THAT
5 WE HAD A FILE OPEN AND I DIDN'T KNOW WHY THERE WAS NO
6 APPLICATION IN EXISTENCE.

7 Q WHEN WAS THAT?

8 A WHEN DID I COME TO LEARN THAT THE FILE HAD
9 BEEN OPENED?

10 Q YES.

11 A MR. MAGLICA CALLED IT TO MY ATTENTION. HE
12 ASKED ME FOR -- I HAD A MEETING WITH HIM AND HE ASKED ME
13 FOR A PRINTOUT.

14 MR. WEISS: EXCUSE ME.

15 THE WITNESS: I'M SORRY, YES?

16 MR. WEISS: IT SEEMS TO ME THAT TO DISCLOSE WHAT
17 YOU AND MR. MAGLICA DISCUSSED COULD CONSTITUTE A
18 WAIVER OF THE PRIVILEGE, AND I WILL OBJECT TO THE
19 QUESTION FOR THAT REASON.

20 Q BY MR. DINAN: I'M NOT SURE THAT THE ANSWER
21 ENTIRELY RELATED TO THE QUESTION. RATHER THAN GET
22 INTO A COLLOQUY HERE, LET ME JUST GO BACK A STEP.

23 SO YOUR TESTIMONY IS IT WAS DRAWN TO YOUR
24 ATTENTION BY MR. MAGLICA; IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q WHEN WAS THIS?

2 A I CAN'T PINPOINT IT. IT WAS SOMETIME IN
3 THE YEAR -- I BELIEVE IT WAS SOMETIME IN 1985. IT COULD
4 HAVE BEEN '86, I DON'T RECALL.

5 Q SO THE END OF 1985?

6 A I JUST DON'T REMEMBER THE DATE. IT WAS
7 SOMETIME PRIOR TO THE TIME THAT THE FILES WERE TRANSFERRED
8 AND BUSINESS WAS TRANSFERRED TO LYON & LYON.

9 Q SOMETIME BEFORE?

10 A YES.

11 Q WHEN HE BROUGHT THIS TO YOUR ATTENTION,
12 WHAT DID YOU DO THEN?

13 A NOTHING.

14 Q WHY DID YOU DO NOTHING?

15 A COMPARED TO WHAT?

16 Q WELL, I MEAN YOU JUST TESTIFIED MR. MAGLICA
17 BROUGHT TO YOUR ATTENTION THAT A FILE HAD BEEN OPENED TO
18 PREPARE AN APPLICATION AND NOTHING HAD HAPPENED AND WHEN
19 YOU LEARNED THAT, MY QUESTION IS WHAT DID YOU DO THEN?

20 A AS TO WHAT?

21 Q WELL, AS TO LEARNING WHY IT WASN'T FILED OR
22 TO TRY TO GET IT FILED OR TO FIGURE OUT WHAT HAD
23 HAPPENED OR ANYTHING YOU ARE SAYING YOU JUST IGNORED THE
24 ISSUE?

25 A NO, I DIDN'T IGNORE IT. I JUST AM TRYING TO

1 UNDERSTAND WHAT INFORMATION YOU WANT.

2 I DID NOT FILE AN APPLICATION AT THAT TIME,
3 AMONG THE REASONS THAT I DIDN'T, IF I RECALL CORRECTLY,
4 IS IT WAS TOO LATE.

~5 Q DID YOU MAKE ANY INQUIRY THOUGH TO LEARN
6 WHY IT HADN'T BEEN FILED PREVIOUSLY?

7 A I BELIEVE SO.

8 Q WHAT DID THAT INQUIRY --

9 A IT TURNED UP NO INFORMATION. THAT'S WHY
10 I TELL YOU TODAY I DON'T KNOW WHY IT WASN'T FILED.

11 Q IF YOU WERE INFORMED THAT MR. MAGLICA
12 TESTIFIED IN HIS DEPOSITION THAT THE REASON IT WASN'T
13 FILED WAS BECAUSE HIS ATTORNEYS LOST THE FILE, WHAT WOULD
14 YOU RESPOND TO THAT?

15 MR. WEISS: WELL, I'M GOING TO OBJECT TO THE
16 FORM OF THE QUESTION.

17 THE WITNESS: I WOULD ASK WHAT MR. MAGLICA MEANT
18 WHEN HE SAID "LOST THE FILE."

19 Q BY MR. DINAN: WELL, PRESUMING HE MEANT THAT
20 IN THE COMMON ENGLISH USAGE OF THE WORD.

21 MR. WEISS: I OBJECT TO THE QUESTION. I DON'T
22 KNOW HOW LOST IS BEING USED, EITHER.

23 (RECESS.)

24 MR. CLARK: BACK ON THE RECORD. BOB, I'M GOING TO
25 LEAVE. I'VE GOT TO BE SOMEPLACE. BEFORE I LEAVE, I

1 WOULD JUST MAKE A REQUEST ON THE RECORD THAT MAG
2 INSTRUMENT PROVIDED THE SCHEDULING OF PRIVILEGED
3 DOCUMENTS WHICH HAVE BEEN WITHHELD IN THE VARIOUS FILES
4 THAT MR. GARDNER TURNED OVER TO YOU IN RESPONSE TO OUR
5 SUBPOENA.

6 MR. DINAN: I WOULD REQUEST THAT SAME LIST.

7 Q OKAY. JUST A FEW MORE QUESTIONS, MR. GARDNER.
8 DO YOU RECALL WHEN YOU INSTRUCTED MR. WALTER
9 TO PREPARE A DESIGN PATENT APPLICATION?

10 A MY RECOLLECTION WHICH I ALREADY SAID WAS
11 VAGUE WAS AT THE SAME TIME THAT I GAVE HIM THE MATERIALS
12 TO PREPARE THE UTILITY APPLICATION.

13 Q AND GOING BACK TO THAT LAST QUESTION WHICH
14 HAS TO DO WITH THE DEFINITION OF THE WORD LOST, IF YOU
15 FOUND THAT MR. MAGLICA SO TESTIFIED, WHAT WOULD YOU RESPOND
16 TO THAT?

17 MR. WEISS: COUNSEL, YOU ALREADY COVERED THAT.

18 MR. DINAN: I THINK WE BROKE DURING THE COLLOQUY
19 OF WHAT THE WORD LOST MEANT.

20 THE WITNESS: KNOWING MR. MAGLICA'S DIFFICULTY WITH
21 ENGLISH AND I DON'T MEAN THAT IN A CRITICAL SENSE, JUST
22 KNOWING THE REALITY OF HIS -- THAT ENGLISH ISN'T HIS
23 FIRST LANGUAGE, I WOULD INQUIRE AS TO WHAT HE MEANT BY
24 LOST BECAUSE I WOULD EXPECT THAT HE WAS -- I WOULD HAVE
25 EXPECTED THAT HE WAS USING THE TERM IN YOUR BROAD SENSE

1 OF THE WORD THAT IT WAS REQUESTED AND SOMEHOW DID NOT
2 GET DOWN IN THAT SENSE, IT WAS LOST OR DROPPED BETWEEN
3 THE CRACKS, SOMETHING OF THAT NATURE. THAT WOULD BE MY
4 EXPLANATION AS TO WHAT HE MEANT AND BASED ON THE
5 INFORMATION I HAVE NOW, IT'S NOT A BAD CHARACTERIZATION.

6 Q THE DOCUMENT OR DOCUMENTS WHICH MR. MAGLICA
7 BROUGHT TO YOU TO PREPARE THE APPLICATION, WHERE WOULD
8 THEY BE NOW?

9 A THE DOCUMENTS THAT HE BROUGHT TO ME TO BE
10 PREPARED?

11 Q YES.

12 A TO USE IN PREPARING THE APPLICATION?

13 Q RIGHT.

14 A I WOULD GUESS THEY'RE IN THE FILES THAT
15 WERE SENT TO LYON & LYON AND THAT ARE REFLECTED IN PART
16 IN THE COPIES THAT YOU GAVE ME.

17 Q SO SHOULD ALL THOSE DOCUMENTS BE IN THOSE
18 FILES?

19 A EVERYTHING THAT I HAD I SENT DOWN THERE
20 WITH THE EXCEPTION OF THE FEW MISCELLANEOUS DOCUMENTS,
21 NONE OF WHICH SEEMED TO RELATE TO THE APPLICATION THAT
22 I TALKED ABOUT FIRST THING THIS MORNING.

23 Q NOW, CONCERNING THE HARDWARE THAT HE
24 BROUGHT, WHERE DID THAT GO?

25 A I DON'T KNOW. I DON'T KNOW IF THAT WAS

1 STATE OF CALIFORNIA)
) ss.
 2 COUNTY OF LOS ANGELES)
 3
 4

5 I, MICHELLE PULTZ, CSR # 4409,

6 a Notary Public in and for the County of Los Angeles,

7 State of California, do hereby certify:

8 That, prior to being examined, the witness named
 9 in the foregoing deposition, to wit, PAUL GARDNER,

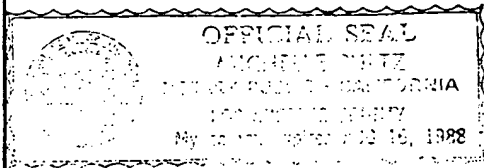
10 was by me duly sworn to testify the truth, the whole truth
 11 and nothing but the truth;

12 That said deposition was taken down by me in
 13 shorthand at the time and place therein named and
 14 thereafter reduced to typewriting under my direction.

15
 16 I further certify that I am not interested in
 17 the event of the action.

18
 19 WITNESS my hand and seal this 8th day of
 20 April, 1988.

21
 22
 23
 24 Notary Public in and for the County
 of Los Angeles, State of California



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